

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF MONTANA,	)	DOCKET NO.: PT-2003-22
	)	
Appellant,	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
-vs-	)	ORDER and OPPORTUNITY
	)	<u>FOR JUDICIAL REVIEW</u>
KEITH P. & LYDIA P. RHEA	)	
	)	
Respondents.	)	

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The above-entitled appeal was heard on August 12, 2004, in Missoula, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The Department of Revenue (DOR), represented by Appraiser Mark Flanik and Regional Manager Jim Fairbanks, presented testimony in support of the appeal. The taxpayers, Keith and Lydia Rhea (Taxpayers), appeared on their own behalf and presented testimony in opposition to the appeal.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. Testimony was taken from both the Department of Revenue and the Taxpayer, and exhibits from both parties were received.

The Board affirms the decision of the Missoula County Tax Appeal Board for the total value indication for the subject property.

**FACTUAL BACKGROUND**

1. Due, proper, and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The subject property is residential in character and described as follows:

Lot 33, Block 1, Fairway Estates, City of Missoula, Missoula County, State of Montana. Street Address of 104 Fairway Drive, (Assessor ID #: 00006001971).
3. For tax year 2003, the Department of Revenue appraised the subject property at \$88,562 for the land and \$235,838 for the improvements.
4. The taxpayer filed an appeal with the Missoula County Tax Appeal Board on September 3, 2003, requesting a total value indication of \$278,900.
5. In its November 17, 2003 decision, the county board reduced the value of the property to \$287,838 (Land - \$52,000, Improvements - \$235,838)

6. The DOR then appealed that decision to this Board on December 4, 2003, citing the following reason for appeal:

The nature of the proof adduced at the hearing was insufficient from a factual and legal standpoint, to support the Boards decision.

#### DOR'S CONTENTIONS

The DOR appealed the County Board's decision because the land value was reduced from \$88,562 to \$52,000. The County Board did not modify the value of the improvements.

DOR Exhibit E is a listing of the land sales used to establish the land value for the subject property. Summarized, this exhibit illustrates the following:

Current Base Size (SF)	12,000
Base Rate (sf)	\$6.17
Monthly Rate of Change	0.57%

Sale #	Sale Date	Sale Price	Lot Size	Time Adjusted	Adjusted Price Per Unit (SF)	Sale #	Sale Date	Sale Price	Lot Size	Time Adjusted	Adjusted Price Per Unit (SF)
1	Mar-98	\$60,000	12,000	\$75,687	\$6.31	12	Jun-99	\$58,900	10,926	\$69,278	\$6.34
2	Mar-99	\$64,000	15,531	\$76,367	\$4.92	13	Oct-99	\$64,900	17,755	\$74,859	\$4.22
3	Nov-99	\$68,000	15,531	\$78,048	\$5.03	14	Dec-99	\$64,900	15,240	\$74,122	\$4.86
4	Sep-99	\$64,900	14,182	\$75,228	\$5.30	15	Jul-00	\$65,400	15,240	\$72,091	\$4.73
5	Dec-99	\$64,900	11,500	\$74,122	\$6.45	16	Nov-00	\$59,000	14,766	\$63,695	\$4.31
6	Jul-00	\$72,000	11,500	\$79,366	\$6.90	17	Oct-00	\$64,900	14,829	\$70,433	\$4.75
7	Oct-99	\$64,900	11,500	\$74,859	\$6.51	18	Nov-00	\$59,000	14,053	\$63,695	\$4.53
8	Nov-99	\$64,900	11,482	\$74,490	\$6.49	19	Dec-00	\$79,900	13,200	\$85,803	\$6.50
9	Jun-00	\$64,900	11,505	\$71,908	\$6.25	20	Oct-00	\$79,000	13,200	\$85,735	\$6.50
10	Nov-99	\$64,900	11,500	\$74,490	\$6.48	21	Nov-98	\$54,900	12,347	\$66,757	\$5.41
11	Sep-99	\$64,900	11,500	\$75,228	\$6.54	22	Feb-00	\$62,000	12,449	\$70,105	\$5.63

The DOR testified that the subject property is situated on the golf course and, therefore, the land on the golf course is valued at 20% higher than property not fronting the golf course. It was also testified that the 20% was established from the previous appraisal cycle and carried over into the current appraisal cycle. The DOR testified that sale #1 on exhibit E is the only sale that fronts the golf course.

The DOR presented Exhibit D to provide support for the subject's land value. The sales illustrated on this exhibit front the golf course. Summarized, this exhibit shows the following:

Sale	Sale Date	Sale Amount	Land SF	2003 Land Value	2003 Imp. Value	Land Value (sale minus imps)
1	5/24/2001	\$237,500	12,997	\$88,680	\$175,380	\$62,120
2	5/10/2001	\$220,000	14,100	\$88,812	\$129,230	\$90,770
3	6/3/2002	\$230,000	11,790	\$88,535	\$139,040	\$90,960
4	8/17/1999	\$230,000	11,790	\$88,535	\$140,450	\$89,550
5	5/21/1999	\$300,000	16,826	\$89,140	\$200,560	\$99,440
6	5/3/1999	\$280,000	11,990	\$88,559	\$187,290	\$92,710
7	5/25/1999	\$358,000	11,986	\$88,559	\$262,420	\$95,580
8	7/20/2001	\$210,000	13,000	\$88,680	\$130,610	\$79,390
9	8/6/2001	\$250,000	10,922	\$88,430	\$145,790	\$104,210
10	8/31/2000	\$225,000	12,144	\$88,557	\$175,640	\$49,360
AVERAGE			12,754	\$88,650		\$85,409
SUBJECT			12,024	\$88,562	\$235,838	

The DOR testified that the appraisal method used that

established the 2003 market value for the subject was the sales comparison approach. The Computer Assisted Mass Appraisal System (CAMAS) selected five comparable properties and adjusted the comparables to more resemble the subject. The end result was a value indication of \$324,400. These sales are illustrated on Exhibit F. Summarized, this exhibit depicts the following:

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5
<b>Dwelling Description</b>						
Total Rooms	7	7	7	12	12	8
Bedrooms	3	4	3	6	6	3
Bathrooms	2.5	2	3	4	4	2.5
Yr. Built/Eff. Age	1980/1980	1955/1980	1987/1987	2000/2000	2000/2000	1979/1979
# Of Stories	1	1	1	1	1	2
Quality Grade	6	6+	6+	6	6	6-
Condition/Desirability/ Utility	Good	Excellent	Good	Good	Good	Average
1 <sup>st</sup> Floor Area	2,602	2,496	2,305	2,366	2,366	1,846
2 <sup>nd</sup> Floor Area	0	0	0	0	0	572
Total Living Area	2,602	2,535	2,305	2,408	2,408	2,490
Basement Area	2,212	2,496	2052	2,366	2,366	1,348
Finished Basement	0	2,000	2052	0	0	776
Finished Basement Quality	None		Typical	None	None	Typical
Attached Garage	572	0	986	1,248	1,248	0
Basement Garage	NA	2 car	0	0	0	2 car
<b>Land Description</b>						
Total Acres	.27	1.1	.27	.33	.33	.44
<b>Valuation</b>						
Sale Date		12/2001	5/1999	12/2001	8/2000	6/1999
Sale Price		\$375,000	\$358,000	\$340,000	\$320,000	\$212,000
MRA Estimate	\$290,544	\$345,837	\$317,540	\$295,856	\$283,572	\$188,979
Adjusted Sale		\$319,707	\$331,004	\$334,688	\$326,972	\$313,565
Comparability		108	129	129	130	134
Weighted Estimate	\$326,614					
Market Value	\$324,400					
Field Control Code Indicator	1					

The DOR's appraisal date is January 1, 2003, but the date of value as illustrated on Exhibit E is January 1, 2002.

The DOR testified that the time lag is required in order to input all the relative sales data into the computer model(s).

The DOR asserts that, based upon the market data presented, the appropriate value for the subject property for the current appraisal cycle is \$88,562 for the land and \$235,838 for the improvements, or a total value of \$324,400.

#### **TAXPAYER'S CONTENTIONS**

Taxpayers' Exhibit #1, pages 2-9, is a Buy/Sell Agreement for the subject property, dated July 19, 2004 for \$309,000. Taxpayers' Exhibit #1, pages 10-11, is a realtor's opinion that the residential market has increased approximately 9% per year in the subject neighborhood. The Taxpayers assert that the sale of the property occurred approximately 18 months after the DOR date of value. Based upon an appreciation rate of 9% per year, this would suggest a value for the property of \$271,279.

The taxpayers also testified that sale of the property meets the criteria of market value as recognized by the DOR.

#### **BOARD'S DISCUSSION**

The DOR testified that Sale #1 on Exhibit E is located on the golf course. This property sold for \$5.00 SF (\$60,000/12,000 SF) and took place in 1998. Not considering

any adjustment for time, this would suggest a value of \$60,120 for the subject lot. DOR's Exhibit E advocates for a value of \$73,802 for the land. The DOR further testified that the lots that front the golf course were adjusted upward an additional 20%. The Board does not disagree with the DOR that property fronting a golf course may carry a greater value than property not fronting the course. But the Board does disagree with the application of the additional 20% based on a prior appraisal cycle. It may have been a fitting adjustment in 1997 and supported by market data, but any application of a percentage adjustment in the current cycle should also be supported by market data. Based on the market data presented the Board believes the appropriate market value for the subject lot is \$73,802.

The sales illustrated on Exhibit F as testified by the DOR are the properties that established the value for the subject property. It's interesting to note that Comp #2 is the only property within the subject neighborhood and located on the golf course. The DOR presented nine additional sales (Exhibit D) that occurred within the appraisal time frame, in the subject's immediate neighborhood, and on the golf course. But the Board was not

presented the property record cards to know if those properties are comparable to the subject with respect to age, size, bedrooms, baths, etc. It certainly can be assumed that the location would be considered similar.

Exhibit D only illustrates what sales prices and DOE appraised values for the land and improvement. It does indicate that the DOR has under appraised some properties and over appraised others.

In *Albright V State of Montana*, 281 Mont. 196, 1997, the Court said, *"We recognize that the Department's method of assessing property and estimating market values is by no means perfect, and will occasionally miss the mark when it comes to the Constitution's goal of equalizing property valuation. However, perfection in this field is, for all practical purposes, unattainable due to the logical and historical preference for a market-based method, and the occasional lack of market data. Nonetheless, we conclude that the Department's interdisciplinary method--which utilizes the market data approach, the income approach, the cost approach, or some combination of these approaches--is a reasonable attempt to equalize appraisal of real property throughout the State and that it comports with the most modern and accurate appraisal practices available.*

*Finally, we note that in those occasional situations when, due to the inherent imperfections in the Department's market-based method, fair, accurate, and consistent valuations are not achieved, individual taxpayers can and should avail themselves of the*



*property tax appeals process set forth at §15-15-101, -102, -103, and -104, MCA.*  
(emphasis supplied)

The Taxpayer here appealed the DOR valuation to the Missoula County Tax Appeal Board and received a favorable decision that reduced the value of the land to \$52,000. It appears that the Board arrived at the \$52,000 based upon the land value for the comparables on Exhibit F. Although the County Board did not reduce the value assigned to the improvements, the total value assigned by the Board is \$287,838. Subsequent to the County Board's hearing, the taxpayer has signed a Buy/Sell Agreement (Exhibit 1) for the property for \$309,000. This document is dated July 19<sup>th</sup>, 2004. Although this sale occurred approximately eighteen months after the DOR assignment of the current value, and approximately thirty months after the DOR's date of value, January 1, 2002, all indications in the record suggest the residential real estate market in Missoula has been positive. DOR Exhibit E suggests an annual increase of 7% per year or .006% per month. DOR's Exhibit F shows a paired sale, comps 3 and 4, which suggests an annual increase of 5% per year or .004% per month. Taxpayer's Exhibit #1, the letter from the selling realtor, indicates the market was

increasing at approximately 9% per year or .008% per month. The difference in value based on the County Board's decision of \$287,838 (1/1/2002 - date of value) and the sale of the property of \$309,000 (7/19/2004 - date of buy/sell), suggests an increase of 7.4% or .0025% per month. Based upon the indications in the record, the County Board's decision was warranted with regards to the total value of the property at \$287,838.

The Board's review of the evidence submitted by the taxpayer and the DOR shows that there is substantial and compelling sales evidence in support of the total value arrived at by the Missoula County Tax Appeal Board.

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**CONCLUSIONS OF LAW**

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301, MCA.
2. §15-8-111 MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
3. Albright V State of Montana, 281 Mont. 196, 1997.
4. The appeal of the DOR is denied and the decision of the Missoula County Tax Appeal Board is affirmed.

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**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Missoula County by the local Department of Revenue office at the land value of \$73,802 for the land and \$214,036 for the improvements. The allocation of values as determined by the Missoula County Tax Appeal Board is modified, but the total value of the property is affirmed.

Dated this 18th day of August, 2004.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

\_\_\_\_\_  
GREGORY A. THORNQUIST, Chairman

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JERE ANN NELSON, Member

\_\_\_\_\_  
JOE R. ROBERTS, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 18<sup>th</sup> day of August, 2004, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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Missoula, Montana 59803-2405

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Dale Jackson  
Chairman  
Missoula County Tax Appeal Board  
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Missoula, Montana 59808

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DONNA EUBANK  
Paralegal